

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JON BRADY HANVEY,

Plaintiff,

v.

Case No. 19-cv-517-pp

W. DELORIT, *et al.*,

Defendants.

**ORDER DISMISSING PLAINTIFF'S CASE WITHOUT PREJUDICE FOR
FAILURE TO PAY THE INITIAL PARTIAL FILING FEE**

On April 10, 2019, the plaintiff filed a complaint under 42 U.S.C. §1983, alleging that the defendants discriminated against him based on his religious beliefs and violated his rights to free exercise of religion. Dkt. No. 1. He also filed motion under 28 U.S.C. §1915, asking for permission to proceed without prepaying the filing fee. Dkt. No. 2.

Although the plaintiff no longer is incarcerated, the Prison Litigation Reform Act (PLRA) applies to his case because the plaintiff was incarcerated when he filed the complaint. Under the PLRA, a plaintiff may proceed with his case without prepaying the filing fee if he satisfies certain conditions, one of which is paying an initial partial filing fee.

This originally was assigned to Magistrate Judge William Duffin. On May 2, 2019, Judge Duffin ordered that on or before May 23, 2019, the plaintiff had to pay an initial partial filing fee of \$26.67. Dkt. No. 10. On May 23, the court received a letter from the plaintiff, explaining that he'd been granted bond, but

that while he'd been "job hunting relentlessly," he had not been able to find a job and did not have any money to pay the fee. Dkt. No. 11.

Judge Duffin construed the plaintiff's letter as a request to waive his obligation to pay an initial partial filing fee. Dkt. No. 12. Judge Duffin denied the plaintiff's request to waive the initial partial filing fee but gave him additional time to pay the fee. Id. Judge Duffin ordered the plaintiff to pay the fee by July 8, 2019. Id. at 2. He informed the plaintiff that, if the plaintiff did not pay the fee by the revised deadline, the court would dismiss his case. Id. at 2-3.

Because the plaintiff has not yet paid the initial partial filing fee, the court has not screened the complaint or ordered the Marshals Service to serve it on the defendants. The defendants don't know that they've been sued, so they have not had the opportunity to decide whether to consent to Magistrate Judge Duffin's authority to decide the case. For that reason, the clerk's office reassigned the case to a district judge to determine how to proceed.

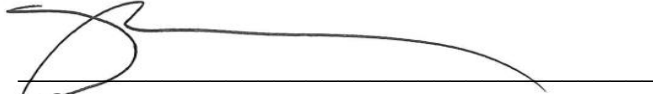
The plaintiff has had almost three months to pay the initial partial filing fee of \$26.67. The extended deadline Judge Duffin gave the plaintiff—July 8, 2019—has passed, and the plaintiff has neither paid the initial partial filing fee nor asked for more time to do so. The court concludes that the plaintiff no longer wishes to pursue the lawsuit.

The court **ORDERS** that this case is **DISMISSED WITHOUT PREJUDICE** based on the plaintiff's failure to comply with Judge Duffin's order and based on his failure to pay the initial partial filing fee by the deadline Judge Duffin

set. Because the court is dismissing the case without prejudice, the plaintiff may refile the complaint in the future subject to the relevant statutes of limitations.

Dated in Milwaukee, Wisconsin, this 24th day of July, 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge